

in opinion

April 17, 1956

SEP 22 1988

CONCORD N.H.

The Honorable Lane Dwinell
Governor of New Hampshire
Concord, New Hampshire

Dear Governor Dwinell:

Mr. Wyman has discussed with me your letter of April 11, 1956, and has requested that I reply.

The first of the two questions raised in your letter is as follows:

"Is it not the prerogative of the (a) Head of a Department, (b) Board of Trustees of an Institution, or (c) Board of Commission of a State Agency, as the responsible authority of the particular governmental unit to:

"1. Establish the hours of opening and closing of their unit, or certain functions of their operations, to public access?"

This question is answered in the negative; and you are advised that in our opinion, except if otherwise provided by the Legislature, the prerogative lies with the Governor and Council.

The question is one of some difficulty because of the history of legislation concerning the subject. Prior to the Special Session of 1950 the matter was governed by sections 19 and 20 of chapter 27 of the Revised Laws, as amended:

"19. Office Hours. All state offices and departments shall be open continuously for the transaction of public business at least between the hours of eight-thirty o'clock in the forenoon and five o'clock in the afternoon each day of the week except Sunday; provided, that such offices and departments may be closed on legal holidays, and may also be closed on Saturdays throughout the year when approved by the governor and council as hereinafter provided. The governor and council may allow the closing of all or any state offices and departments on Saturdays, if not incompatible with public business; provided, however, that any

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such state offices and departments closing on Saturdays shall adopt a noon hour or lunch period not exceeding one hour for all employees of such office or department. The governor and council may adopt rules and regulations to accomplish the purposes of this section and may provide for the maintenance of minimum staffs on duty on Saturdays and may vary the foregoing provisions with regard to special classes of employees where necessary in the public interest.

"20. Suspension. The provisions of the preceding section may be suspended by the governor and council as to any department when in their judgment the necessities of such department may make such suspension justifiable."

Among the acts passed at the Special Session was the Personnel Act of 1950. This act specifically repealed the sections just quoted. An examination of the Personnel Act (now RSA 98:13) discovers no provision designed to fill the void with respect to business hours created by such repeal except to the extent that the following may do so:

"The director [of Personnel] shall be the executive officer of the commission, and, under its direction and control, supervise all its activities. It shall be his duty:

"X. To prescribe and submit to the commission for approval by said commission and by the governor and council, a code of rules for the classified service which shall provide for the classification, compensation, recruitment, selection, appointment, promotion, demotion, transfer, discipline, removal and lay-off of employees as well as for attendance, holidays, leaves of absence, merit rating, and the hearing of appeals from employees under any provision of this chapter or the rules and regulations made pursuant thereto." (Emphasis added) RSA 98:13.

It is our view that the reference to "attendance" and to "holidays" does not take the place of the comprehensive language of the statutes repealed.

It must be taken, then, that there is currently no legislation on the matter when state offices shall be open to public access; nor has the power to regulate in that regard been delegated to any particular state agency. In such circumstances it is our view that this matter of broad public interest lies with the chief executive authority of the state, that is to say, the Governor and Council. Const., Part Second, Art. 50, Art. 62; with respect to state institutions see RSA 10:1.

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The other question contained in your letter is as follows:

"Is it not the prerogative of the (a) Head of a Department, (b) Board of Trustees of an Institution, or (c) Board or Commission of a State Agency, as the responsible authority of the particular governmental unit, to:

"2. Establish, schedule, set or regulate timing, working periods, or actual hours of work for its employees and personnel; subject to the provision that such action is not in conflict with the basic work week schedule for the particular classification or trade group as established by the Division of Personnel."

We answer this question in the affirmative.

Very truly yours,

Warren E. Waters
Deputy Attorney General

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cc: Roy Y. Lang
Director of Personnel